

United States Court of Appeals
Fifth Circuit

FILED

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41376
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SEVERIANO ALMANZA-TAPIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-395-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Severiano Almanza-Tapia pleaded guilty to a charge of being present illegally in the United States subsequent to deportation and a conviction for an aggravated felony, a violation of 8 U.S.C. § 1326. The district court sentenced him to sixty-three months of imprisonment and three years of supervised release.

Almanza-Tapia contends that the felony and aggravated felony provisions of 8 U.S.C. § 1326(b) are unconstitutional. He acknowledges that his argument is foreclosed by Almendarez-Torres

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 03-41376

-2-

v. United States, 523 U.S. 224, 235 (1998), but he asserts that Almendarez-Torres has been cast into doubt by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). He seeks to preserve his argument for further review.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). We must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation marks and citation omitted). Accordingly, the judgment of the district court is AFFIRMED.